



**Al'amin & another v Land Adjudication & Settlement Scheme Officer Kilifi
County & 2 others; Kogo & 83 others (Intended Defendant) (Environment &
Land Case E033 of 2023) [2025] KEELC 521 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 521 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E033 OF 2023**

**LL NAIKUNI, J
FEBRUARY 7, 2025**

BETWEEN

**ABDULRAHMAN MOHAMMED AL'AMIN 1ST PLAINTIFF
UMI MOHAMMED AL'AMIN (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF TEBA BINTI MOHAMMED) 2ND PLAINTIFF**

AND

**THE LAND ADJUDICATION & SETTLEMENT SCHEME OFFICER KILIFI
COUNTY 1ST DEFENDANT
THE COUNTY GOVERNMENT OF KILIFI 2ND DEFENDANT
THE NATIONAL LAND COMMISSION 3RD DEFENDANT**

AND

**TSUMA MWANYAE KOGO INTENDED DEFENDANT
KAINGU BONGO MBOGO INTENDED DEFENDANT
JONESMUS MUMBA INTENDED DEFENDANT
SELINA BEGONJA CHIRONDA INTENDED DEFENDANT
JAMES NGALA INTENDED DEFENDANT
KOMBO KAMBI NGONDO INTENDED DEFENDANT
MWANASITI KAMBI BINGONDO & 77 OTHERS & 77 OTHERS & 77
OTHERS INTENDED DEFENDANT**



RULING

I. Preliminaries

1. This Honourable Court is called upon to make a determination the Chamber summons application dated 3rd July, 2024 by Tsuma Mwanyae Kogo, Kaingu Bongo Mbogo, Jonesmus Mumba, Selina Begonja Chironda, James Ngala, Kombo Kambi Ngondo, Mwanasiti Kambi Bingondo & 77 Others, the Intended Defendants/Applicants herein under the provisions of Articles 50 and 159 of *the Constitution* of Kenya, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Cap. 21; Order 1 Rules 3, 10 (2), 14 of the Civil Procedure Rules, 2010 and all enabling provisions of law.
2. Upon service of the Application to the 1st Plaintiff/Respondent, Respondent opposed the application through a Replying Affidavit sworn on 30th July, 2024.

II. The Intended Defendants/Applicants' case.

3. The Applicants sought for the following orders: -
 - a. Spent.
 - b. Spent.
 - c. In the alternative, if this Honourable court deems fit do grant status quos orders in respect to the suit property pending the hearing and determination of this application and suit.
 - d. The Honourable court be pleased to enjoin the intended Defendants as Defendants in this suit.
 - e. The Honourable court do grant leave to the intended Defendants to file their defence and counter claim and any relevant documentation in support of their claim.
 - f. The Honourable court be pleased to enjoin the Land registrar Mombasa as an interested party to the instant suit.
 - g. Upon the grant of the orders in (f) above, an order of Inhibition be issued directed at the interested party and the same be subsequently registered in respect to all that land known as Plot Number MN/III/553-Original Number MN/III/284/5 pending the hearing and determination of the instant suit.
 - h. The OCS Kijipwa Police Station and Mtwapa Police station be directed to ensure compliance with the orders sought.
 - i. The costs of this application be provided for.
4. The application was premised on the grounds, facts and testimony on the face of it and further supported by the 31 Paragraphed supporting affidavit of SAID TSUMA MWANYAE KOGO one of the intended Defendants. The affidavit had four (4) annexures marked as "TMK - 1 to TMK - 4" annexed herein. The Deponent averred that:
 - a. The instant application was brought on behalf of the natives of all that piece of land known as Plot No.MN/III/553 - Original Number MN/III/284/5 who had been constantly harassed and intimidated by the AL' Amin family.



- b. It was within his knowledge that the intended Defendants and their families had resided on the suit property since time in memorial and they had erected permanent structures on the suit wherein they had undertaken various economic activities including but not limited to; farming. He personally resided on the suit property with his family.
- c. Their occupation of the suit property was evidenced by the graveyards located therein where their parents and other relatives had been buried.
- d. Moreover, there was a church that had been erected on the suit property wherein the intended Defendants go to worship.
- e. With respect to the instant matter, the Intended Defendants averred that their occupation was prompted by the fact that the suit property had been un-habited and this prompted their forefather to move in whereby they started by clearing the bushes and clearing grass so as to make it habitable.
- f. At all times material to the above, the Plaintiffs' family was unknown to them up until their father one Mr. Muhammad AL' Amin began to have interest in the suit property.
- g. What followed was Mr. Muhammad's acts of oppression wherein he used his powers and influence to harass the natives with the aim of depriving them of the suit property and his sole aim was to occupy it.
- h. What followed was the push by the natives to seek the intervention of various government agencies with the aim of protecting their proprietary interests to no avail.
- i. The efforts of their forefathers had been frustrated by the fact that the AL' amin family exercised influence and colluded with the then colonial powers to frustrate their efforts in seeking government intervention by carrying out unlawful evictions and unwarranted arrests. (Annexed and marked as "TMK – 2" were sample copies of charge sheets of leaders of the Kanamai Community.)
- j. The constant tussle between the AL' Amin family and the native was well known to the extent that the Kenya Government through the Ministry of Lands duly formed a Taskforce Committee to adjudicate over the escalating tension between the two factions.
- k. What followed was the establishment of a Taskforce committee which was required to come up with a comprehensive report on how to resolve the issue.
- l. After extensive deliberations and meeting held between the committee members, the members of the AL' Amin and the natives, it was recommended that the land be re-surveyed and subdivided between the AL' Amin family and the natives. (Annexed and marked as "TMK – 3" was a copy of Taskforce Report.)
- m. While it could not be gainsaid that ignorance was no defence, it ought to be one in this case, the natives were oblivious of the legal recourse they were to pursue as they thought that the Taskforce report had solved the existing issues between the two warring factions.
- n. Unknown to them, the AL' Amin family had gone behind their back and colluded with unscrupulous land registrars stationed at the land registry to procure a title in their names.
- o. If allowed they intended to file proof of the various evictions mounted on the natives and more so unwarranted prosecutions mounted on their leaders the latest being the arraignment of one



Alpha Kiti chonga at Kilifi Law courts on 7th January 2024. (Annexed and marked as “TMK – 4” was a copy of the Charge Sheet.)

- p. It was on this basis that they as the intended defendants sought to be enjoined to this suit in order to safeguard their proprietary rights in respect to the suit property as the fraudulent acts by the Plaintiff were aimed at disenfranchising the natives.
- q. The natives contended that the so apply to be enjoined as they were a necessary and proper party that will enable this Honourable court be alive to the issues that true affect them and the AL’ Amin family.
- r. It was imperative for this Honourable court to note that it would be unjust if the intended defendants were not allowed to participate in the suit as it would amount to barring them from advancing their case as against the Plaintiffs.
- s. If not enjoined the court would not be in a position to make a wholesome decision in fact the natives might be forced to file another suit over the same subject matter thus wasting judicial time and resources and there was a risk to there being the delivery of contradicting judgments.
- t. On the Recommendations of the Taskforce report and the subsequent malicious prosecution of some of the natives with the aim of frustrating them to quell their efforts to fight for their rights, it is clear that the intended defendants who still reside on the suit property till date have an identifiable interest in the suit property.
- u. The Intended Defendants were only desirous of ensuring that they shed light on the alleged dispute more so as there existed grave anomalies in the title documents posed by the AL’ Amin family and as such there exists a cause of action which they sought to prosecute through a Counter - Claim.
- v. The instant application sought to have this Honourable Court arrest the Ruling scheduled in respect to the Plaintiffs application dated 14th April 2023 due to injunctive orders that were sought to be granted that would be detrimental to the natives.
- w. It was imperative for this Honourable court to note that at all times material to the instant suit and subsequently before and during the issuance of the Taskforce recommendations, the natives have always resided on the suit property till date with the AL’ Amin occupying apportion of the suit property where they have planted trees and do farming while the natives occupy remaining portion of land.
- x. The native humbly request this Honourable court to in the absence of the issuance of the injunctive reliefs sought by the Plaintiff issue STATUS QUO ORDERS in order to preserve the subject matter of the suit and principally that the families have to date lived on the suit property.
- y. The Intended Defendants in the interim prayed that this Honourable court issues an order of Inhibition in respect to the suit property as it has come to the knowledge that there were plans to dispose of portions of the suit property to third parties with the aim of disposing the natives.
- z. Another order sought was to have the Land Registrar Mombasa county enjoined in the suit as this will enable the realization of the orders sought by the Intended Defendants which will include the registration of the orders of Inhibition and also the cancellation of the title issued in favour of the Plaintiffs if their cause of action was successful.



- aa. The natives further sought the assistance of various law enforcement agencies as there exists escalating tensions between the two warring factions.
- ab. Finally would only be prudent that the previous application be withdrawn as it did incurably defective to the extent that it cannot be remedied by any amendments.
- ac. The existing parties to this instant suit will not in any way be prejudiced if the instant application was allowed as prayed as the matter was yet to proceed to full hearing.

III. The 1st Plaintiff/Respondent's response

5. The 1st Plaintiff/Respondent opposed the application through an 11 paragraphed replying affidavit sworn on 30th July, 2024 by ABDULRAHMAN MOHAMMED AL' AMIN, who averred as follows:
 - i. In response to Paragraphs 2, 3, 4, 5 and 6 of the supporting affidavit, he stated that he was the beneficiary and legal owner of the suit property known as Plot No. MN/III/553 (Original No. MN/III/84//5 as the Administrator of the Estate of Teba Binti Mohamed who was the registered owner who lawfully bought and transferred the title deed.
 - ii. They had been in occupation of the suit property since the time it was bought and they had constructed permanent houses on the suit property together with a mosque for Community worship and the Defendants/Applicants had never been on the suit property and there was no church within the suit property.
 - iii. In response to Paragraphs 7, 8, 9, 10, 11 and 12 of the supporting affidavit; the Applicants had not been in occupation of the suit property and they only invaded the property sometimes in March 2023 prompting the filing of the suit. They had no right whatsoever over the suit property.
 - iv. He further added that there had never been any task force created to analyze the same and had never participated in any consultative meeting with the so-called task force.
 - v. In response to Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the supporting affidavit that the Applicants herein had never been harassed by the beneficiaries or authorities and the charge sheet referred to as "TMK – 4" in the supporting affidavit arose from the Applicants disobedience of Court order issued by this Court maintained status quo of the suit property. (Annexed in the affidavit a copy of the order marked as "AMA – 1").
 - vi. The Applicants were guilty of disobeying Court orders in this Case and had demolished the houses which he constructed and were cultivating and selling portion thereto and could not therefore sought relief of this Court which they had disobeyed. (Annexed in the affidavit a copy of houses demolished by the Applicants and Applicants on the suit property defying a Court order marked as "AMA – 2" and "AMA – 3" respectively.
 - vii. The Applicants' application was devoid of merit and the same should not be allowed because the Applicants had filed several suits in respect of the same property and he had since applied for consolidation of the suits.
 - viii. The affidavit was sworn in response to the Application herein.

IV. Submissions

6. On 25th September, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 3rd July, 2024 be disposed of by way of written submissions and



all the parties complied. Unfortunately, by the time of penning down of the Ruling, the Honourable Court had not accessed the written submissions from any of the parties. Pursuant to that, the Court reserved to deliver the Ruling on its own merit on 31st January, 2025 accordingly.

V. Analysis and Determination

7. I have carefully read and considered the pleadings herein and the relevant provisions of *the Constitution* of Kenya, 2010 and statutes. In order to arrive at an informed decision, the Honourable Court has framed the following four (4) issues for its determination.
 - a. Whether the Intended Defendants ought to be joined in this suit.
 - b. Whether the Intended Interested Parties should be joined as a party in these proceedings?
 - c. Whether the Applicants are entitled to the orders of inhibition that they sought out to obtain.
 - d. Who will bear the Costs of Notice of Motion application 3rd July, 2024.

ISSUE No. a). Whether the Intended Defendants ought to be joined in this suit.

8. Under this Sub – title, the main issue here is whether the Intended Defendants ought to be joined in this suit. Under the provision of Order 1 Rule 3 of the Civil Procedure Rules, 2010 a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows:-

“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

9. Under the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 provides that a court may, either on application made by a party or without, allow joinder of a party whose presence it considers to be necessary in a suit. The full text of the Rule provides as follows: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

10. The power of a court to order joinder is one based on its discretion. The discretion must however be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010. This position was ably elucidated in the case of: “Civicon Limited – Versus - Kivuwatt Limited and 2 Others [2015] eKLR” as follows:-

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being



a discretionary order, the court may allow the joinder of a party as a Defendant in a suit based on the general principles set out in Order I Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”.

11. In the case of:- “Joseph Njau Kingori – Versus - Robert Maina Chege & 3 Others [2002] eKLR” the Court distilled the guiding principles in considering whether to allow joinder of an intending party as follows:-

- “ 1. He must be a necessary party.
2. He must be a proper party.
3. In the case of the defendant there must be a relief flowing from that Defendant to the plaintiff.
4. The ultimate order or decree cannot be enforced without his presence in the matter.
5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”

12. Courts have held that a party is necessary to a suit where it is shown that the legal reliefs sought would directly affect the person sought to be joined, to avoid a multiplicity of suits or where it is shown that the Defendant cannot effectually set a defence unless that person is joined in it. This position was set out in the Ugandan case of “Departed Asians Property Custodian Board – Versus - Jaffer Brothers Ltd [1999] 1 EA 55” quoted with approval by the Court of Appeal in “Civicon Limited – Versus - Kivuwatt Limited & 2 others [2015] eKLR” as follows:-

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the Plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

13. The Court of Appeal also quoted its earlier decision in the case of “Meme – Versus - Republic (2004) KLR637 wherein it held that joinder will be permissible:-



- i. Where the presence of the party will result in the complete settlement of all the question involved in the proceedings;
 - ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and
 - iii. Where the joinder will prevent a likely course of proliferated litigation.
14. On the basis of the above legal provisions and authorities, this court must now consider whether the proposed Defendants, ought to be joined in this suit. As has been set out in detail, the question herein is whether the intended proposed Defendants are necessary parties to this suit and whether a relief flows from the proposed Defendants to the Plaintiff or whether its presence is necessary to settle all questions involved in this suit.
 15. It is a fact acknowledged by all parties in this matter that the Intended Defendants and their families had resided on the suit property since time in memorial and they had erected permanent structures on the suit wherein they have undertaken various economic activities including but not limited to; farming. iii. Their occupation of the suit property was evidenced by the graveyards located therein where their parents and other relatives have been buried. Moreover, there was a church that has been erected on the suit property wherein the intended defendants go to worship.
 16. With respect to the instant matter, the intended defendants averred that their occupation was prompted by the fact that the suit property had been un-habited and this prompted their forefather to move in whereby they started by clearing the bushes and clearing grass so as to make it habitable. At all times material to the above, the Plaintiffs' family was unknown to them up until their father one Mr. Muhammad AL' Amin began to have interest in the suit property. What followed was Mr. Muhammad's acts of oppression wherein he used powers and influence to harass the natives with the aim of depriving them of the suit property and his sole aim was to occupy it.
 17. The Plaintiff averred that they had been in occupation of the suit property since the time it was bought and they had constructed permanent houses on the suit property together with a mosque for Community worship and the Defendants/Applicants had never been on the suit property and there was no church within the suit property. The Applicants had not been in occupation of the suit property and they only invaded the property sometimes inn March 2023 prompting the filing of the suit. They had no right whatsoever over the suit property
 18. Be that as it may, the Court is satisfied that the Intended Defendants are necessary parties to this suit. Their presence will result in the complete settlement of all the questions involved in the proceedings.

ISSUE b). Whether the Intended Interested Parties should be joined as a party in these proceedings.

19. Under the sub - title, the Applicants sought for the joinder of the intended interested parties as parties in the suit. It is instructive to note that before a party is enjoined in a matter, the court ought to satisfy itself that the proceedings are alive. That means that the suit must still be pending before the Court. Therefore, the applicant must move the Court during the pendency of the proceedings in that matter.
20. For the proposition that the proceedings must be pending, this Court relies on the cases of “Florence Nafula Ayodi & 5 others – Versus - Jonathan Ayodi Ligure – Versus - John Tabalya Mukite & another”; “Benson Girenge Kidiavai & 67 others (applicants/intended interested parties) [2021] eKLR” and “Elizabeth Nabangala Wekesa – Versus - Erick Omwamba & 3 Others; Esther Momanyi Omwamba (applicant) [2021] eKLR”. In the first case, the Court held that in case a party wishes to be enjoined in a matter, the case must be either be at “the nascent or other stages but must be alive.” In the second case,



it was held that in case a party moves the Court to be enjoined as a party, “there is no doubt anymore that if a party wishes to be joined in a matter he or she must move the Court during the pendency of the proceedings in that matter... the main point is that it (suit) is still alive.”

21. Similarly, in the case of:- “Leonard Kimeu Mwanthi – Versus - Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties) [2021] eKLR”, Lady Justice Mbugua J stated, “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” From the facts of the instant case, this suit has neither been heard nor finalized. If anything, it is proceeding with applications at the interlocutory stage. Therefore, this stage is appropriate for the application of this nature.
22. It is worth noting that an application for joinder of an interested party may be made even at the appellate stage of the proceedings. The only condition to be met first is that the proceedings are still alive. The second point that the Court should take care of is that the proposed interested party should not use the procedure to institute a fresh suit, particularly if his application is made at the appellate stage.
23. On these two points I am guided by the holdings of the Court of Appeal and Supreme Court of Kenya respectively the following cases. The applicant in the case:- “David Kiptugen – Versus - Commissioner of Lands, Nairobi & 4 others [2016] eKLR” filed an application before the Court of Appeal to be enjoined as an interested party to the appeal and for remission of the matter back to the trial court for hearing de novo. The court allowed that application and held;

“We agree with Ms. Kirui that whatever the outcome of the appeal, if the applicant is not joined in this appeal, he will be deprived of an opportunity to be heard on his claim to the ownership of the suit land. That will of course be unconstitutional and against the rules of natural justice”.

24. Second, in the case of “Communications Commission of Kenya & 4 Others – Versus - Royal Media Services Limited”, the Supreme Court in declining a similar application for joinder of an interested party held;

“The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the Court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal...”

We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause.”

25. The first step will be to define who an Interested Party is in order to consider whether the Applicant herein falls in the same category/ definition. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

26. Black’s Law Dictionary defines an Interested Party as

“a party who has a recognizable stake (and therefore standing) in the matter.”



27. Further, The Supreme Court of Kenya in “Communications Commission of Kenya and 4 Others – Versus - Royal Media Services Limited & 7 Others Petition No. 15 OF [2014] eKLR” relied on its earlier decision in the “MUMO MATEMO case” where the Court in defining who an Interested Party is, and held as follows:-

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme – Versus - Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

28. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant satisfies the criteria for joinder as an Interested Party in the proceedings. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of “Francis K. Muruatetu and another – Versus - Republic & 5 others (2016) eKLR”, the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows:-

- “a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”

29. Further, in the case of: “Skov Estate Limited & 5 others – Versus - Agricultural Development Corporation & another [2015] eKLR” Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows:-

“In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough



for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the Judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent Plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

30. In a nutshell, I strongly believe having the Land Registrar in this matter as an interested party will help the Court understand the history of the suit property to be able to sufficiently determine the matter in a just manner. Therefore the Land Registrar is hereby joined as an Interested Party.

ISSUE No. c). Whether the Applicants are entitled to the orders of inhibition that they sought out to obtain.

31. Under this sub - title the Court examines whether the Defendants have made out a case for the grant of orders of inhibition. The order of inhibition is provided for under the provision of Section 68 (1), (2) & (3) of the [Land Registration Act](#) No. 3 of 2012 and Regulation 79 (1), (2) & (3) of the Land Registration (General) Regulations, 2017. Section 68 of the [Land Registration Act](#) of 2012 provides as follows in section 68:

- “(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
- (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered. when there is good reason to preserve, or stay the registration of dealings, with respect to a particular parcel of land for a temporary period.”

Regulation 79 – Registration of Inhibition

- 1). A person who wishes to register an inhibition pursuant to a court order issued under 68 (1) of the Act shall make an application to the Registrar.



- 2). The application made under Paragraph (1) shall be in Form LRA 66 set out in the Sixth Schedule.
 - 3). An application under Paragraph (1) shall be accompanied by the said court order duly sealed, making specific reference to the parcel of land affected.
32. These sections give the court discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event. As such, an Inhibition order is an order which is in the nature of a prohibitory injunction restraining dealings on land pending further orders of the court. The purpose of the said order is to preserve the property in question from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions; that the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the Applicant unless preservative orders of Inhibition are issued, that the refusal to grant orders of Inhibition would render the Applicant's suit nugatory, and that the applicant has an arguable case.
33. I have perused the documents annexed to the affidavits in support of the application herein. It would be in the interest of justice to preserve the subject matter of the case. The general principle that will apply is that the court exercises discretion judiciously and in good faith, for a proper purpose and take into account all relevant factors and is reasonable in the circumstances of the case in granting an order of inhibition. At this stage the court is dealing with whether to preserve the substratum of the case by way of an inhibition and maintenance of status quo.
34. On the issue of maintenance of status quo to preserve the property the court held in the case of "Joel Mugambi Mukira & 2 others (for and on behalf of Kimathi tenants welfare group) – Versus - County Government of Nyeri [2019] eKLR" that;
- “In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugah -Versus - Kunga [1988] KLR 748*, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28 (k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.”
35. Further in the case of in the case of "Joel Kipkurui Arap Koech – Versus - Alice Wambui Magandu 3 Others [2018] eKLR" the court held that;
- “In that case, the court granted an injunction on the general principle that it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting an interlocutory injunction and after hearing the case, find that a greater injustice has been occasioned.
- The guiding principle of the overriding objective is that the Court should do justice to the parties before it and their interests must be put on scales.
- Both the Plaintiff and the 1st Defendant are claiming the suit property. In my view, it is only fair to make orders that safeguard and maintain the status quo until the suit is heard and determined.



Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, it is clear that the Plaintiff has established a prima facie case with a probability of success against the Defendants.

In my view, it is clear that the Plaintiff has shown his right over the suit property. As regards irreparable damage, I take the view that should the suit land be alienated, the Plaintiff will have lost what he regards as his land and which may not be quantified in damages. The balance of convenience would tilt in favour of the Plaintiff in order to safeguard the subject matter of the suit pending hearing and determination.”

36. I find that it would be in the interest of justice to order for an inhibition, be issued directed at the interested party and the same be subsequently registered in respect to all that land known as Plot Number MN/III/553-Original Number MN/III/284/5 pending the hearing and determination of the instant suit.

ISSUE No. d). Who will bear the Costs of Notice of Motion application 3rd July, 2024.

37. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.

38. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazera Mwangi & another (Suing as the Executors of Eliud Timothy Mwangi – Deceased) [2022] eKLR”, that:

“ 58. The Black Law Dictionary defines “Cost” to mean, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”

39. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to have the costs in the cause



VI. Conclusion and Disposition

40. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience.
41. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
- a. That the Notice of Motion application dated 3rd July, 2024 be and is hereby found to have merit and is allowed.
 - b. That the Honourable Court do hereby join the Intended Defendants herein, Tsuma Mwanyae Kogo, Kaingu Bongo Mbogo, Jonesmus Mumba, Selina Begonja Chironda, James Ngala, Kombo Kambi Ngondo, Mwanasiti Kambi Bingondo & 77 Others as Defendants in this suit.
 - c. That the Honourable Court be and is hereby pleased to join the Land Registrar Mombasa as an interested party to the instant suit.
 - d. That an order of Inhibition do and is hereby issued directed at the Interested Party and the same be subsequently registered in respect to all that land known as Plot Number MN/III/553-Original Number MN/III/284/5 pending the hearing and determination of the instant suit.
 - e. That Plaintiffs granted 7 days to file an Amended Complaint and the Defendants granted 14 days to file and serve their Defence and the Plaintiffs granted 7 days to file Replies to the Defence.
 - f. That for expediency sake, the matter to be mentioned on 20th March, 2025 before Hon. Mr. Justice Olola for further directions on the compliance and conducting of the Pre – Trial Conference pursuant to the provision of Order 11 of the Civil Procedure Rules, 2010 on the final disposal of the suit.
 - g. That the cost of the Notice of Motion application dated 3rd July, 2024 shall be in the cause.

IT IS SO ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH THE MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS7TH DAY OF FEBRUARY 2025.

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HON. MR. JUSTICE L. L. NAIKUNI
ENVIRONMENT AND LAND COURT
AT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. M/s. Juma Advocate for the Plaintiffs/Respondents.
- c. M/s. Abwao Advocate for the 2nd Defendant/Applicant.
- d. M/s. Kimathi Advocate for the Intended Defendants.

